

AMENDED IN SENATE AUGUST 4, 2008

AMENDED IN SENATE JULY 1, 2008

AMENDED IN ASSEMBLY MAY 19, 2008

AMENDED IN ASSEMBLY MARCH 24, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 2939

**Introduced by Assembly Member Hancock
(Coauthors: Assembly Members Laird and Lieu)**

February 22, 2008

An act to amend Sections 17958.5, 17958.7, and 18941.5 of the Health and Safety Code, relating to building standards.

LEGISLATIVE COUNSEL'S DIGEST

AB 2939, as amended, Hancock. Building standards: green buildings: local variances.

The California Building Standards Law provides for the adoption of building standards by state agencies by requiring all state agencies that adopt or propose adoption of any building standard to submit the building standard to the California Building Standards Commission for approval or adoption.

Existing law requires the Department of Housing and Community Development to propose the adoption, amendment, or repeal of building standards to the commission relating to hotels, motels, lodging houses, apartment houses, and dwellings, and the buildings and structures accessory thereto, except as specified.

Existing law authorizes a city or county to make changes or modifications in the building standards proposed by the department and

approved by the commission, to provide for local variances relating to local climatic, geological, or topographical conditions, upon making certain findings and filing those findings with the commission.

This bill would specifically authorize a city, county, or city and county to make changes or modifications in the building standards proposed by the department and approved by the commission, to permit the city, county, or city and county to implement one or more green building standards, guidelines, and rating systems, as defined, if the change or modification does not permit use of a building standard that is less stringent than those otherwise permitted under existing law.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and hereby declares all of
2 the following:

3 (a) The design, construction, and maintenance of buildings and
4 structures within the state can have a significant impact on the
5 state's environmental sustainability, greenhouse gas emissions,
6 resource usage and efficiency, and waste management, and the
7 health and productivity of the state's residents, workers, and
8 visitors.

9 (b) Green building is a whole-systems approach to the design,
10 construction, and operation of buildings, from the early stages of
11 development to the final finishes to the day-to-day operations and
12 maintenance of the building. Green building includes the following
13 five principles: planning for livable communities, energy
14 efficiency, indoor environmental quality and health, natural
15 resource conservation, and water conservation.

16 (c) Green building benefits are spread throughout the systems
17 and features of the building. Green building goes beyond energy
18 efficiency measures to include, among other things, sites and
19 designs that make it easier for people to drive less, durable and
20 low-maintenance materials, passive solar design, high efficiency
21 heating and cooling equipment, upgraded insulation, materials
22 with reduced formaldehyde and low-volatile or nonvolatile organic
23 compounds, reuse and recycling of construction and demolition
24 debris, recycled content products, low-water landscaping and high
25 efficiency irrigation, and high efficiency appliances and fixtures.

1 (d) In recent years, green building design, construction, and
2 operations techniques and practices have become increasingly
3 widespread. Many homeowners, businesses, and building
4 professionals have voluntarily sought to incorporate green building
5 techniques and practices into their projects. A number of local and
6 national systems have been developed to serve as guides to green
7 building practices.

8 (e) Several provisions of state law are creating uncertainty
9 regarding the ability of California cities and counties to require
10 the use of proven and effective green building techniques, even
11 where those techniques exceed all minimum California building
12 standards. Specifically, the California Building Standards Law
13 generally preempts cities and counties from setting building
14 standards different from those set forth in the California Building
15 Standards Code, except when the city or county determines that
16 modifications are “reasonably necessary because of local climatic,
17 geological, or topographical conditions.” The resultant uncertainty
18 is preventing the cities and counties that wish to do so from fully
19 realizing the economic and environmental benefits of mandating
20 green building measures, even though those measures provide one
21 of the most effective means for local governments to meet
22 greenhouse gas emissions reduction and other important
23 environmental objectives. While the California Building Standards
24 Commission is developing green building standards that will be
25 adopted as code, many local governments have begun to go beyond
26 voluntary measures and mandate more comprehensive green
27 building programs as a strategy to address climate change, and
28 those local governments should have a mechanism to do so without
29 the current uncertainty and potential legal threat.

30 (f) To permit the people of the State of California to realize the
31 benefits of green building, it is necessary to amend the California
32 Building Standards Code to clarify that a city, county, or city and
33 county may mandate the use of appropriate green building
34 measures.

35 SEC. 2. Section 17958.5 of the Health and Safety Code is
36 amended to read:

37 17958.5. (a) Except as provided in Section 17922.6, in
38 adopting the ordinances or regulations pursuant to Section 17958,
39 a city, county, or city and county may make those changes or
40 modifications in the requirements contained in the provisions

published in the California Building Standards Code and the other regulations adopted pursuant to Section 17922 that it determines, pursuant to the provisions of Section 17958.7, are reasonably necessary to do either of the following:

(1) Address local climatic, geological, or topographical conditions.

(2) Permit the city, county, or city and county to implement one or more green building standards, guidelines, and rating systems, if the change or modification does not permit the use of a building standard that is less stringent than those otherwise permitted under this part. For the purposes of this subdivision, a city and county may make reasonably necessary modifications, on the basis of local conditions, to the requirements adopted pursuant to Section 17922 and contained in the California Building Standards Code and related regulations.

(b) For the purposes of this part, “green building” shall mean a structure that uses a holistic approach or life cycle analysis approach for design, construction, and demolition that minimizes the building’s impact on the environment, the occupants, and the community, and that includes measures to reduce impacts, including, but not limited to, site planning, energy efficiency, water conservation, materials and resource efficiency, indoor air quality, and environmental quality.

(c) For the purposes of this part, “green building standards, guidelines, and rating systems” shall mean a publicly available system that is developed by a ~~third-party~~ *third party* and provides a mechanism for evaluating and determining whether, and to what extent, a structure qualifies as a green building.

(d) Any ordinance or regulation adopted by a city, county, or city and county to implement one or more green building standards, guidelines, and rating systems shall include a procedure by which that city, county, or city and county shall review any subsequent changes to that system before those changes can take effect within the city, county, or city and county.

(e) A building standard permitted by an ordinance or regulation adopted by a city, county, or city and county to implement a green building standard, guideline, or rating system shall not be less restrictive than the building standards contained in the California Building Standards Code on the subject of performance, safety, or the protection of life, health, or the general welfare.

1 ~~(e)~~

2 ~~(f)~~ A city, county, or city and county that has adopted an
3 ordinance or regulation to implement one or more green building
4 standards, guidelines, and rating systems prior to January 1, 2009,
5 without making the required findings pursuant to subdivision (a)
6 of Section 17958.7, shall be deemed to have complied with this
7 section, and Sections 17958.7 and 18941.5, for the purposes of
8 that ordinance or regulation, if the city, county, or city and county
9 makes and files the required finding pursuant to subdivision (a)
10 of Section 17958.7 on or before January 1, 2010.

11 ~~(f)~~

12 ~~(g)~~ Nothing in this section or in Section 17958.7 or 18941.5
13 shall limit or alter the requirements of subdivision (h) of Section
14 25402.1 of the Public Resources Code regarding city or county
15 conservation or energy insulation standards.

16 SEC. 3. Section 17958.7 of the Health and Safety Code is
17 amended to read:

18 17958.7. (a) Except as provided in Section 17922.6, the
19 governing body of a city, county, or city and county, before making
20 any modifications or changes pursuant to Section 17958.5, shall
21 make an express finding that the modifications or changes are
22 reasonably necessary because of local climatic, geological, or
23 topographical conditions, or to permit the city, county, or city and
24 county to implement one or more green building standards,
25 guidelines, and rating systems. The finding shall be available as a
26 public record. A copy of those findings, together with the
27 modification or change expressly marked and identified so as to
28 correlate with the relevant findings, shall be filed with the
29 California Building Standards Commission. If the modification or
30 change consists of the adoption of one or more green building
31 standards, guidelines, and rating systems, this requirement shall
32 be satisfied by filing a copy of the findings that expressly identifies
33 the green building guidelines and rating systems. No modification
34 or change shall become effective or operative for any purpose until
35 the finding and the modification or change have been filed with
36 the California Building Standards Commission.

37 (b) The California Building Standards Commission may reject
38 a modification or change filed by the governing body of a city,
39 county, or city and county if no finding was submitted.

SEC. 4. Section 18941.5 of the Health and Safety Code is amended to read:

18941.5. (a) (1) Amendments, additions, and deletions to the California Building Standards Code adopted by a city, county, or city and county pursuant to this section or pursuant to Section 17958.7, together with all applicable portions of the California Building Standards Code, shall become effective 180 days after publication of the California Building Standards Code by the commission, or at a later date after publication established by the commission.

(2) The publication date established by the commission shall be no earlier than the date the California Building Standards Code is available for purchase by the public.

(b) Neither the State Building Standards Law contained in this part, nor the application of building standards contained in this section, shall limit the authority of a city, county, or city and county to establish more restrictive building standards reasonably necessary because of local climatic, geological, or topographical conditions, or to permit a city, county, or city and county to implement one or more green building standards, guidelines, and rating systems. The governing body shall make the finding required by Section 17958.7 and the other requirements imposed by Section 17958.7 shall apply to that finding. Nothing in this section shall limit the authority of fire protection districts pursuant to subdivision (a) of Section 13869.7. Further, nothing in this section shall require findings required by Section 17958.7 beyond those currently required for more restrictive building standards related to housing.